

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EXELON GENERATION COMPANY, LLC,

Plaintiff,

-V-

EAST COAST POWER AND GAS, LLC

Defendant.

20 Civ. 9625 (JPC)

ORDER

JOHN P. CRONAN, United States District Judge:

On September 16, 2021, Plaintiff filed a motion for default judgment, Dkt. 43, but Plaintiff did not obtain a Certificate of Default from the Clerk's Office prior to filing its motion for default judgment. A default judgment under "Rule 55 provides a 'two-step process' for the entry of judgment against a party who fails to defend: first, the entry of a default, and second, the entry of a default judgment." *City of N.Y. v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 128 (2d Cir. 2011); *see also* Fed. R. Civ. P. 55(a) ("When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default."). Accordingly, Plaintiff's motion for default judgment is denied without prejudice for failure to comply with Local Civil Rule 55.1 and Rule 55(a) of the Federal Rules of Civil Procedure.

Plaintiff may file a renewed motion for default judgment by November 3, 2021. Any motion for default judgment must be filed in accordance with Local Civil Rule 55.2 and 3.D of the Court's Individual Rules and Practices for Civil Cases. The renewed motion must include an updated statement of damages and updated declaration from counsel, which should include any further communication with Defendant against whom default judgment is sought. Pursuant to this Court's

Individual Rules, Plaintiff must serve its motion for default judgment and supporting paperwork on Defendant and must file an Affidavit of Service on ECF by November 5, 2021. Defendant shall file any opposition to the motion for default judgment no later than November 24, 2021. Plaintiff shall file any reply no later than December 8, 2021.

Defendant is advised that as a limited liability company, it cannot proceed *pro se* and its failure to obtain counsel constitutes a failure to “otherwise defend” under Rule 55(a) of the Federal Rules of Civil Procedure. *See, e.g., Mickalis Pawn Shop, LLC*, 645 F.3d at 129-32; *Eagle Assocs. v. Bank of Montreal*, 926 F.2d 1305, 1310 (2d Cir. 1991); *McFarlane v. Harry’s Nurses Registry*, No. 17 Civ. 6350 (PKC), 2020 WL 1643781, at *15 (E.D.N.Y. Apr. 2, 2020).

It is further ORDERED that Defendant appear and show cause at a hearing before this Court on December 15, 2021 at 9:30 a.m. why an order should not be issued granting a default judgment against Defendant. That hearing shall take place telephonically. At the scheduled time, counsel for all parties should call (866) 434-5269, access code 9176261. In the event that Defendant does not appear, Plaintiff’s counsel should be prepared to discuss any communications with Defendant or representatives for Defendant regarding this litigation and any intent to challenge the suit, including whether Defendant has or intends to retain legal counsel; how Defendant was served with the Order and documents filed by Plaintiff in this case; why Plaintiff’s counsel is confident that Defendant has been served with those documents and have notice of the hearing; and the method for calculating damages. In the event that Defendant opposes the motion for default judgment prior to the scheduled court appearance on December 15, 2021, the court appearance shall also serve as a Case Management Conference.

It is further ORDERED that Plaintiff serve Defendant via overnight courier with a copy of this Order within one week of the date of this Order. Within two business days of service, Plaintiff must file proof of such service on the docket.

The Clerk of the Court is respectfully directed to terminate the motion pending at Docket Number 43.

SO ORDERED.

Dated: October 19, 2021
New York, New York

A handwritten signature in black ink, appearing to read "John P. Cronan", is positioned above a horizontal line.

JOHN P. CRONAN
United States District Judge